IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

Lucas, Prendergast, Albright,
etc. Plaintiffs

Case # 94 CVH 08-5929

-vs

Florence Zschach, etc. et al,. (Sheward, J.)
Defendants

(Filed Mar. 23, 1995)

DEFENDANT TRUSTEES ZSCHACH INITIAL
DISCLOSURE OF WITNESSES

COME NOW Defendant Counterclaimant Trustees Zschach who by their attorney, John F. Heath, disclose the following as possible witnesses in the above numbered cause:

1. Trustee Florence Zschach, about dealings with Robert E. Albright (hereinafter "Albright").

2. Trustee Marylou Zschach – the same.

3. Trustee Margaret Sloan – witness to Albright's actions. 3A. Mary White, citizen of Upper Arlington (hereinafter the "City") – her personal dealings with Albright and her observation of Albright's fiduciary disloyalty before City Council.

4. Kent Stuckey who signed for CompuServe. Apparently he witnessed Albright's dramatic "strewing" pictures across a table.

5. Frank Forsythe, apparently escrow agent for $120,000 refundable deposit, kept at interest.

6. The news media official (or officials) receiving information from Albright – identity not as yet known.

7. John and Vicky Majors, Mrs. Voelker and other neighbors in vicinity of Wirthman real estate – at neighborhood association meeting it was difficult to tell WHOM Albright was representing.

8. James Graham, real estate consultant and frequent witness of actions of Albright – Will testify as to his extreme behaviour. Also will testify about feasibility of area for commercialization vis-a-vis residential. Also witnessed Albright's statement that "There are people behind this who are very powerful and who don't take 'No' for an answer."

9. Robert Bracco of Northwest Community Gp, who opposed commercialization and was candidate for City Council.

10. The lady who called Marylou Zschach about alleged threats by the City, if she refused to deal with CompuServe.

11. Agent for Summit Properties who apparently was original high residential bidder.

11A. Jerry Swedlow, whom Trustee first contacted in February 1993 to adjudge the so-called CompuServe contract to have lapsed.

12. Jack Chester who requested subpena to be served on Marylou Zschach, in connection w/ proceedings anent zoning etc. He later represented Trustees in matters, intimately related to the case at bar. His professional opinion re Albright's so-called "contract", his definition of "contingent fee", and his professional reaction

to Albright's billing **both** the City and Trustees for his attendance at hearing before Judge Sheward on June 28, 1993. Also why he wanted to depose Richard King on behalf of Hampton Lane Gp.

13. Judith Lubbers, M.D., concerning condition of Florence Zschach on December 7, 1992 after being browbeaten by Albright to sign a document committing her to a contract she did not want, and her condition at other times as a result of Albright's oppressive behaviour and the condition Albright placed her in. Also concerning condition of Marylou Zschach, as a result of Albright's behaviour. This evidence is **not** offered to establish a basis for damages for pain and suffering, but to shed light on duress and the forcefulness of Albright's "persuasion." [Duress can exist without a gun being drawn.]

14. Secretary of Hilliard City Council to produce Compuserve contract to purchase land in Hilliard. (For comparison purposes – as to whether Albright's document met professional standards for a realty sale contract.)

15. Agents for M&I Shottensteins Homes, for Bob Webb, for Kelly & Weiler, for Cipriano, for Crane Plastics, and other previous bidders on Wirthman realty. Also as to whether any further bidding by them was countenanced Albright.

16. James A Rhodes, as to opinion on feasibility of use of said Wirthman realty, and also as to present and past opposition of City officials to the reasonable development of the land.

17. Surveyor A. J. Myers – He surveyed 1 acre, to be set apart for Marylou Zschach in payment for her work in furthering the interests of the Trust. He reported survey results to Albright who never delivered a deed based thereon to Trustees to execute to Zschach.

18. Lisa Griffin, regarding the balloting for annexation. Unsure at this time, whether annexation can be voided.

19. John Allen, President of City Council – Whether Council is willing to re-zone back to "residential" to restore the "status quo", recent zoning of Wirthman property arguably having resulted in taking of said property without just compensation.

19A. Other Council members to testify to Albright's actions

20. Virginia Barney, former mayor, on desire to retain CompuServe in City. Was CompuServe 1/5th of City tax rate base?

20A Charlie Schneider, regarding annexation and all public records anent same.

21. All other bidders on property, details of which were in clients' files retained by Albright.

22. Mr. Sandy Simpson of Ohio Equities who was putting deal together for a buyer, such as a "1031 tax free exchange."

23. Mike Moritz and Daniel Gunset – re legal activities and interviews with Marylou Zschach, if such activities and interviews become relevant

24. Glen Dugger of Ben Hale & Harrison Smith – zoning lawyer of CompuServe.

25. Upper Arlington Zoning Bd Secretary – as to WHY Board changed Wirthman realty from residential to commercial and WHETHER there were any recent precedents for such action. Also whether height of original lighting was limited to 20 feet, and not 35.

26. Murry Cox, President of Compuserve, with respect to bids on Wirthman realty. Did he make any on his own? Did Plaintiffs persuade him to look at Wirthman deal? Dealings with Hilliard?

27. Robert C. Preston, who represented Wirthman Trust in advance of Albright.

28. T. J. Reilly whom Trustees previously sought as counsel. He favored "residential", but now he is on zoning committee and favors "commercial." WHY did he change? Was pressure brought to bear upon him?

29. Secretary of Upper Arlington Community Improvement Corp (CIC) to answer question whether one of principal reasons for CIC's formation was to find and to force a commercial use of the Wirthman realty in opposition to the rights of the owners.

30. Architect Tom Schnell as to final drawings and the "iffiness" of planned construction and breaking of ground.

31. City Attorney Sharon Pfancuff as to her dealings with Albright. Cross-examination as to her threat to condemn their property if Trustees did not sign w/ Compuserve.

32. City Manager Richard King – whether he pays the City's bills. His instructions to Albright during the 1½ years of Albright's representation of Trustees. Whether he was awarded a large bonus for tying up the Wirthman property in order to put it at the disposal of CompuServe, in case they wanted it.

33. Glen Zschach – re. Albright's statements and actions.

34. Witnesses, unknown now, who will be made known to parties, when Trustees discover same.

35. Treatise, "Law of Professional Responsibility", Guttenberg & Snyder. In Columbus Law Library at KFO 76.5 .AG 88 1992.

This list of witnesses is submitted in order to comply with the order of court. Counsel has been involved herein for less than two (2) months. Based on lack of complete knowledge **at this time,** much of what is listed here is tentative. It is not intended as innuendo, but it is done in "privilegio fori."

Listed witnesses can shed light on conflict of interest, loyalty to client, right of client to restrict decision making authority of lawyer, breach of confidences, professional negligence and the positive tort of brazen interference with advantageous business relations and negotiations.

/s/ John F. Heath
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Trial Attorney for
Defendants Zschach

Certification of Service

On March 23, 1995 by U.S. Mail, first class, postage pre-paid, I mailed a copy of the above document to Gordon P. Shuler, Esq., Suite 500, 326 S. High Street, Columbus, Ohio 43215, Attorney for Plaintiff law firm and for Plaintiff Robert E. Albright individually and a copy to R. Douglas Wrightsel, Esq, Emens, Kegler, Brown, Hill & Ritter, Suite 1800, 65 E. State Street, Columbus, Ohio 43215, Attorney for Defendant Trustee Margaret Ann Slone.

/s/ John F. Heath
JOHN F. HEATH